

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. NM MC 70793 through NM MC 70809.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claim with the proper office of the Bureau of Land Management on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Dale B. Dilts, Esq., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Asbestos Mines, Inc., appeals the New Mexico State Office, Bureau of Land Management (BLM), decision of August 2, 1982, which declared the unpatented Lawrence Wray Nos. 1, 2, and 3; George J. Nos. 1, 2, and 3; Jo Ann Sparks Nos. 1 and 2; Eulala Lee No. 1; Carolyn O; Erma D. Nos. 1, 3, and 4; Elta B Nos. 1, 4, and 5; and Mill Site lode mining claims, NM MC 70793 through NM MC 70809, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM in 1980.

Review of the case file does not disclose the receipt of any instrument, letter, or other document by BLM in 1980. A subsequent submission, received by BLM July 7, 1981, provided a copy of a proof of labor recorded in Lincoln County, New Mexico, on August 27, 1980. All of the claims were located before October 21, 1976. Copies of the notices of location were filed with BLM September 28, 1979. The file does not reflect that any proof of labor was filed in 1979, although a 1981 communication to appellant from BLM states that a proof of assessment work was filed September 28, 1979.

[1] Under section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), the owner of a mining claim located before Oct. 21, 1976, must file, both in the office where the location notice is recorded and in the proper office of BLM, a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to December 31 of each year. This requirement is mandatory, and failure to comply by filing the appropriate instruments both in the county and with BLM is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim invalid and void. The recordation requirement of section 314 of the FLPMA that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Day, 63 IBLA 70 (1982).

[2] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on a mining claim, but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained, and which have been abandoned. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981). The statute expressly requires that a mining claimant file the instrument recorded in the local state office, whether proof of labor or notice of intention to hold the claim, in the proper BLM office. Where, as in this case, there was no proof of labor or notice of intention to hold the claim filed with BLM in 1980, there was no discretion under the statute for BLM to determine that those claims had not been abandoned. We recognize that appellant's error was inadvertent, but neither BLM nor this Board has any authority to excuse lack of compliance with the statutory requirements of FLPMA, or to afford any relief from the statutory consequences. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glen J. McCrorey, 46 IBLA 355 (1980). As the Board stated in Lynn Keith:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C § 1744 (1976) is imposed by the statute itself, and would operate even without regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Will A. Irwin  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge